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Shahriar Noorparvar*

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

**SHAHRIAR NOORPARVAR,
Individually and On Behalf of
All Others Similarly Situated,**

Plaintiff,

UBER TECHNOLOGIES, INC.,

Defendant.

Case No.:

CLASS ACTION

Complaint for Damages and Injunctive Relief Pursuant To The Telephone Consumer Protection Act, 47 U.S.C § 227 et seq.

Jury Trial Demanded

INTRODUCTION

1. SHAHRIAR NOORPAVAR (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from the illegal actions of UBER TECHNOLOGIES, INC. (“Defendant” or “Uber”), in negligently and/or intentionally contacting Plaintiff on Plaintiff’s cellular telephone, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.* (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon personal knowledge as to himself and his own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by his attorneys.
 2. The TCPA was designed to prevent calls like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
 3. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer.” TCPA, Pub.L. No. 102–243, § 11.
 4. Toward this end, Congress found that:

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy

1 invasion.

2 *Id.* at § 12; *see also, Martin v. Leading Edge Recovery Solutions, LLC,*
 3 2012 WL 3292838, at *4 (N.D. Ill. Aug. 10, 2012) (citing Congressional
 4 findings on TCPA’s purpose).

- 5 Congress also specifically found that “the evidence presented to the
 6 Congress indicates that automated or prerecorded calls are a nuisance and an
 7 invasion of privacy, regardless of the type of call...” *Id.* at §§ 12-13. *See*
 8 *also, Mims*, 132 S. Ct. at 744.
- 9 6. As Judge Easterbrook of the Seventh Circuit recently explained in a TCPA
 10 case regarding calls to a non-debtor similar to this one:

11 The Telephone Consumer Protection Act ... is well
 12 known for its provisions limiting junk-fax transmissions.
 13 A less-litigated part of the Act curtails the use of
 14 automated dialers and prerecorded messages to cell
 15 phones, whose subscribers often are billed by the minute
 16 as soon as the call is answered—and routing a call to
 17 voicemail counts as answering the call. An automated
 18 call to a landline phone can be an annoyance; an
 19 automated call to a cell phone adds expense to
 20 annoyance.

21 *Soppet v. Enhanced Recovery Co., LLC*, 679 F.3d 637, 638 (7th Cir. 2012).

- 22 7. According to the Federal Communications Commissions’ November 29,
 23 2012 Declaratory Ruling, 27 F.C.C.R. 15391, 27 FCC Rcd. 15391, 57
 24 Communications Reg. (P&F) 107, 2012 WL 5986338 (Nov. 29, 2012), in
 25 response to a request to opt-out of receiving further text messages on one’s
 26 cellular telephone by texting the word “Stop” or something similar, a person
 27 or entity is permitted to send in response a one-time text message confirming
 28 the opt-out request, as long as the so-called “confirmatory” text message
 does not attempt to convince the consumer to reconsider his or her opt-out
 request or contain marketing, and is sent within five minutes of the opt-out

1 request.

2 8. The Ninth Circuit recently affirmed certification of a TCPA class action
3 similar to this one in *Meyer v. Portfolio Recovery Associates, LLC*, 707 F.3d
4 1036, 2012 WL 4840814 (9th Cir. Oct. 12, 2012).

5 **JURISDICTION AND VENUE**

6 9. This Court has federal question jurisdiction because this case arises out of
7 violations of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs.,*
8 *LLC*, 132 S. Ct. 740 (2012).

9 10. Venue is proper in the United States District Court for the Central District of
10 California pursuant to 18 U.S.C. § 1391(b) because Plaintiff resides in the
11 State of California, the harm to Plaintiff occurred in the State of California,
12 Plaintiff is a resident of the State of California and the County of Los
13 Angeles, and Defendant is subject to personal jurisdiction in the County of
14 Los Angeles and within this judicial district because it conducts business
15 there.

16 **PARTIES**

17 11. Plaintiff is, and at all times mentioned herein was, a citizen and resident of
18 the State of California and the County of Los Angeles. Plaintiff is, and at all
19 times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (39).

20 12. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and
21 at all times mentioned herein was, a Delaware corporation whose primary
22 corporate address is in California.

23 13. Defendant is and at all times mentioned herein was, a corporation and is a
24 “person,” as defined by 47 U.S.C. § 153 (39).

25 14. Defendant is a nationwide passenger transportation service, connecting
26 riders and drivers through a mobile telephone application.

1 15. Plaintiff alleges that at all times relevant herein, Defendant conducted
2 business in the State of California and in the County of Los Angeles, and
3 within this judicial district.

4 **FACTUAL ALLEGATIONS**

5 16. At all times relevant, Plaintiff was a citizen of the State of California.
6 Plaintiff is, and at all times mentioned herein was, a “person” as defined by
7 47 U.S.C. § 153 (39).

8 17. Defendant is, and at all times mentioned herein was, a corporation and a
9 “person,” as defined by 47 U.S.C. § 153 (39).

10 18. At all times relevant Defendant conducted business in the State of California
11 and in the County of Los Angeles, and within this judicial district.

12 19. Sometime on or before December 31, 2013, Plaintiff signed up with Uber
13 via the Uber mobile application on Plaintiff’s cellular telephone.

14 20. On or about December 31, 2013, at approximately 6:58 p.m., Uber
15 responded to plaintiff with a text message using short message script
16 (“SMS”) 89203 stating as follows:

17
18 Thanks for signing up for Uber, shawn! Reply GO to
19 confirm your #. Reply HELP or call 866-576-1039. Std
msg rates may apply.

20 21. Plaintiff responded to this text message by texting “Go” to confirm
22 Plaintiff’s telephone number at approximately 9:34 p.m. on or about
23 December 31, 2013.

24 22. Following Plaintiff’s response, Uber replied with a welcome message at
25 approximately 10:05 p.m. on or about December 31, 2013, which provided
26 instructions to stop receiving future text messages as follows:

Welcome to Uber Alerts! Use our iPhone/Android/BB apps to request a ride. Reply STOP to stop. 8665761029/uber.com. Std msg rates may apply.

23. At approximately 10:06 p.m. on or about December 31, 2013, Uber sent Plaintiff a text message stating:

Hi shawn, we can't find an Uber for you at this time.
Sorry for the inconvenience. Please try again soon!

24. Plaintiff immediately received an identical text message from Uber at approximately 10:06 p.m. on or about December 31, 2013.
 25. Uncertain whether Uber would continue to send Plaintiff additional text messages identical to the text messages alleged in Paragraphs 23 and 24, and with the appearance that Uber was not going to be able to find a car for Plaintiff that evening, Plaintiff replied with a text message stating “Stop” on or about December 31, 2013, at approximately 10:07 p.m., in order to opt out of receiving further text messages from Uber.
 26. By sending this “Stop” text message to Uber, which was Plaintiff’s request to opt-out of receiving further text messages from Uber, Plaintiff revoked any and all express consent that Uber may have had to contact Plaintiff on Plaintiff’s cellular telephone number, including by text message.
 27. Uber then responded to Plaintiff’s “Stop” text message with a text message at approximately 10:42 p.m. on or about December 31, 2013, stating:

Uber Alerts: To stop text confirmations, please confirm your request by texting YES.

28. This text message from Uber was not confirming Plaintiff's opt-out request; to the contrary, this text message from Uber was an attempt to convince Plaintiff to reconsider Plaintiff's opt-out request.

1 29. Subsequently, in a further attempt to stop receiving messages from Uber,
2 Plaintiff replied to the latest text message from Uber (as alleged in
3 Paragraph 27) with a text message stating “Yes”, on or about January 30,
4 2014, at approximately 6:22 p.m.

5 30. In response to this “Yes” text message from Plaintiff, Uber then sent
6 Plaintiff an additional text message on or about January 30, 2014, at
7 approximately 6:24 p.m., stating:

8
9 Sorry, but we could not locate your Uber request. Please
10 text a proper street address with city. Text HELP or visit
support.uber.com for more help

11 31. This text message from Uber was also not confirming Plaintiff’s opt-out
12 request.

13 32. In a further attempt to stop receiving text messages from Uber, Plaintiff
14 replied to this text message from Uber with a text message stating “Stop” on
15 or about January 30, 2014, at approximately 6:24 p.m.

16 33. In response to this text message from Plaintiff, Uber sent a text message to
17 Plaintiff’s cellular telephone on or about January 30, 2014, at approximately
18 6:24 p.m., stating:

19
20 Uber Alerts: To stop text confirmations please confirm
21 your request by texting YES.

22 34. In response to this text message from Uber, Plaintiff responded with a text
23 message stating “Yes” on or about January 30, 2014, at approximately 6:24
24 p.m.

25 35. Finally, in response to this “Yes” text message from Plaintiff, Uber sent
26 Plaintiff a text message on or about January 30, 2014, at approximately 6:25
27 p.m., stating:

1
2 Okay you are opted out and will not receive texts from
3 Uber Alerts. To receive texts again, please text GO or
4 visit uber.com

- 5 36. This last text message from Uber was confirming Plaintiff's opt-out request,
6 and was the first and only text message from Uber that confirmed Plaintiff's
7 opt-out request despite several attempts by Plaintiff to stop further text
8 messages from Uber.
- 9 37. Each of these text messages was sent and received using SMS 89203, which
10 is the short message script assigned to and/or used by Uber.
- 11 38. The telephone number for Plaintiff that Uber sent text messages to was
12 assigned to a cellular telephone service for which Plaintiff incurs a charge
13 for incoming calls and text messages pursuant to 47 U.S.C. § 227(b)(1).
- 14 39. The last four digits of Plaintiff's cellular telephone number are "0101".
- 15 40. The text messages from Uber or its agent constituted calls that were not for
16 emergency purposes as defined by 47 U.S.C. §227 (b)(1)(A)(i).
- 17 41. Defendant sent these text messages via an automatic telephone dialing
18 system ("ATDS") as defined by 47 U.S.C. § 227(a)(1).
- 19 42. This ATDS utilized by Defendant has the capacity to store or produce
20 telephone numbers to be called, using a random or sequential number
21 generator.
- 22 43. This ATDS utilized by Defendant also has the capacity to automatically dial
23 telephone numbers from a list or database of telephone numbers without
24 human intervention.
- 25 44. The text messages from Uber also constitute artificial or prerecorded voice
26 calls pursuant to 47 U.S.C. § 227(a)(1).
- 27 45. The text messages sent utilizing an automatic telephone dialing system
28 and/or an artificial or prerecorded voice alleged in Paragraphs 27, 30 and 33

1 from Defendant or its agent to Plaintiff's cellular telephone were sent
2 without Plaintiff's "prior express consent."

3 46. Having sent Uber an opt-out text message with the word "Stop" on or about
4 December 31, 2013, it was not until Plaintiff sent Uber several additional
5 text messages that Uber then sent Plaintiff a "confirmatory" text message, or
6 in other words, a text message confirming Plaintiff's request to stop
7 receiving further text messages from Uber.

8 47. Plaintiff alleges that each text message from Uber violated 47 U.S.C. §
9 227(b)(1), except for the text messages alleged in Paragraphs 20, 22, 23 and
10 24.

11 CLASS ACTION ALLEGATIONS

12 48. Plaintiff brings this action on behalf of himself and on behalf of all others
13 similarly situated (the "Class").

14 49. Plaintiff represents and is a members of the Class, which includes:

15 All persons within the United States who sent a text
16 message with the word "Stop" to short message script
17 89203 and in response received a text message from short
18 message script 89203 utilizing an automatic telephone
19 dialing system and/or an artificial or prerecorded voice
20 stating "Uber Alerts: To stop text confirmations, please
21 confirm your request by texting YES" within the four
22 years prior to the filing of the Complaint in this action.

23 50. Defendants and their employees or agents are excluded from the Class.
24 Plaintiff does not know the number of members in the Class, but believes the
25 members of the Class number in the tens of thousands, if not more. Thus,
26 this matter should be certified as a Class action to assist in the expeditious
27 litigation of this matter.

28 51. Plaintiff also brings this action on behalf of himself and on behalf of all
others similarly situated (the "Sub-Class").

1 52. Plaintiff represents and is a member of the Sub-Class, which includes:

2
3 All persons within the United States who sent a text
4 message with the word “Stop” to short message script
5 89203 and in response received a text message from short
6 message script 89203 utilizing an automatic telephone
7 dialing system and/or an artificial or prerecorded voice
8 stating “Uber Alerts: To stop text confirmations, please
9 confirm your request by texting YES”, who subsequently
10 sent a text message with the word “Yes” to short message
11 script 89203 and in response received a text message
12 from short message script 89203 utilizing an automatic
13 telephone dialing system and/or an artificial or
14 prerecorded voice stating “Sorry, but we could not locate
15 your Uber request. Please text a proper street address
16 with city. Text HELP or visit support.uber.com for more
17 help” within the four years prior to the filing of the
18 Complaint in this action.

19
20 53. Plaintiff and members of the Class and Sub-Class were harmed by the acts
21 of Defendants in at least the following ways: Defendants, either directly or
22 through its agents, illegally contacted Plaintiff and the members of the Class
23 and Sub-Class via their cellular telephones by sending one or more text
24 messages without prior express consent, thereby causing Plaintiff and the
25 members of the Class and Sub-Class to incur certain cellular telephone
26 charges or reduced cellular telephone time for which Plaintiff and the
27 members of the Class and Sub-Class previously paid, and invading the
28 privacy of said Plaintiff and members of the Class and Sub-Class. Plaintiff
and the members of the Class and Sub-Class were damaged thereby.

29
30 54. This suit seeks only damages and injunctive relief for recovery of economic
31 injury on behalf of the Class and Sub-Class, and it expressly is not intended
32 to request any recovery for personal injury and claims related thereto.
33 Plaintiff reserves the right to expand or modify the Class and Sub-Class

1 definitions to seek recovery on behalf of additional persons as warranted as
2 facts are learned in further investigation and discovery.

3 55. The joinder of the Class and Sub-Class members is impractical and the
4 disposition of their claims in the Class action will provide substantial
5 benefits both to the parties and to the court. The Class and Sub-Class can be
6 identified through Uber's records, Uber's agent's records and/or by public
7 notice, especially since members of the Class and Sub-Class provided their
8 contact information such as email address to Uber in order to sign up for
9 Uber's service.

10 56. There is a well-defined community of interest in the questions of law and
11 fact involved affecting the parties to be represented. The questions of law
12 and fact to the Class and Sub-Class predominate over questions which may
13 affect individual members of the Class and Sub-Class, including but not
14 limited to the following:

- 15 a. Whether, within the four years prior to the filing of this Complaint,
16 Defendant or its agent sent any text message stating "Uber Alerts: To
17 stop text confirmations, please confirm your request by texting YES"
18 in response to receiving a text message stating "Stop" from a member
19 of the Class using any automatic telephone dialing and/or texting
20 system to any telephone number assigned to a cellular telephone
21 service;
- 22 b. Whether the text message stating "Uber Alerts: To stop text
23 confirmations, please confirm your request by texting YES" in
24 response to an opt-out text message (i.e., a "Stop" text message) was
25 an attempt by Defendant and/or its agent to convince the Class
26 member to reconsider their opt-out request;
- 27 c. Whether, within the four years prior to the filing of this Complaint,
28 Defendant or its agent sent any text message stating "Sorry, but we

1 could not locate your Uber request. Please text a proper street address
2 with city. Text HELP or visit support.uber.com for more help” in
3 response to receiving a text message stating “Yes” from a member of
4 the Sub-Class using any automatic telephone dialing and/or texting
5 system to any telephone number assigned to a cellular telephone
6 service;

- 7 d. Whether the text message stating “Sorry, but we could not locate
8 your Uber request. Please text a proper street address with city. Text
9 HELP or visit support.uber.com for more help” in response to a text
10 message stating “Yes” was sent knowingly or willfully by Defendant
11 and/or its agent;
- 12 e. Whether the text messages from Uber constitute an artificial or
13 prerecorded voice pursuant to 47 U.S.C. § 227(b)(1);
- 14 f. Whether Plaintiff and members of the Class and Sub-Class were
15 damaged thereby, and the extent of damages for such violation; and
- 16 g. Whether Defendant and/or its agent should be enjoined from
17 engaging in such conduct in the future.
- 18 57. As a person who received a text message stating “Uber Alerts: To stop text
19 confirmations, please confirm your request by texting YES” in response to a
20 “Stop” text message instead of a text message confirming the person’s opt-
21 out request without Plaintiff’s prior express consent, Plaintiff is asserting
22 claims that are typical of the Class. Plaintiff will fairly and adequately
23 represent and protect the interests of the Class in that Plaintiff has no
24 interests antagonistic to any member of the Class.
- 25 58. As a person who received a text message utilizing an automatic telephone
26 dialing system and/or an artificial or prerecorded voice stating “Sorry, but
27 we could not locate your Uber request. Please text a proper street address
28 with city. Text HELP or visit support.uber.com for more help” in response to

1 a “Yes” text message instead of a text message confirming the person’s opt-
2 out request without Plaintiff’s prior express consent, Plaintiff is asserting
3 claims that are typical of the Sub-Class. Plaintiff will fairly and adequately
4 represent and protect the interests of the Sub-Class in that Plaintiff has no
5 interests antagonistic to any member of the Sub-Class.

6 59. Plaintiff and the members of the Class and Sub-Class have all suffered
7 irreparable harm as a result of the Defendant’s unlawful and wrongful
8 conduct. Absent a class action, the Plaintiff and members of the Class will
9 continue to face the potential for irreparable harm. In addition, these
10 violations of law will be allowed to proceed without remedy and Defendants
11 will likely continue such illegal conduct. Because of the size of the
12 individual claims of members of the Class and Sub-Class, few, if any,
13 members of the Class and Sub-Class could afford to seek legal redress for
14 the wrongs complained of herein.

15 60. Plaintiff has retained counsel experienced in handling class action claims
16 and claims involving violations of the Telephone Consumer Protection Act.

17 61. A class action is a superior method for the fair and efficient adjudication of
18 this controversy. Class-wide damages are essential to induce Defendant to
19 comply with federal and California law. The interest of members of the
20 Class and Sub-Class in individually controlling the prosecution of separate
21 claims against Defendant is small because the maximum statutory damages
22 in an individual action for violation of privacy are minimal. Management of
23 these claims for unlawful text messages is likely to present significantly
24 fewer difficulties than those presented in many class claims.

25 62. Defendant has acted on grounds generally applicable to the Class and Sub-
26 Class, thereby making appropriate final injunctive relief and corresponding
27 declaratory relief with respect to the Class and Sub-Class.

1 63. Plaintiff anticipates providing notice to the Class and Sub-Class by direct
2 mail notice in the form of a post card, internet website, email, and/or other
3 reasonable and appropriate forms of notice.

4 **FIRST CAUSE OF ACTION**

5 **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

6 **47 U.S.C. § 227 ET SEQ.**

7 64. Plaintiff incorporates by reference all of the above paragraphs of this
8 Complaint as though fully stated herein.

9 65. The foregoing acts and omissions of Defendant constitute numerous and
10 multiple negligent violations of the TCPA, including but not limited to each
11 and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

12 66. As a result of Defendants' negligent violations of 47 U.S.C. § 227 et seq.,
13 Plaintiff, the Class and Sub-Class are entitled to an award of \$500.00 in
14 statutory damages, for each and every violation, pursuant to 47 U.S.C. §
15 227(b)(3)(B).

16 67. Plaintiff, the Class and Sub-Class are also entitled to and seek injunctive
17 relief prohibiting such conduct in the future.

18 **SECOND CAUSE OF ACTION**

19 **KNOWING AND/OR WILLFUL VIOLATIONS OF THE**

20 **TELEPHONE CONSUMER PROTECTION ACT**

21 **47 U.S.C. § 227 ET SEQ.**

22 68. Plaintiff incorporates by reference all of the above paragraphs of this
23 Complaint as though fully stated herein.

24 69. The foregoing acts and omissions of Defendant constitute numerous and
25 multiple knowing and/or willful violations of the TCPA, including but not
26 limited to each and every one of the above-cited provisions of 47 U.S.C. §
27 227 et seq.

70. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff, the Class and Sub-Class are entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

71. Plaintiff, the Class and Sub-Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff, the members of the Class and Sub-Class the following relief against Defendant:

FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF

THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Class and Sub-Class \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL VIOLATIONS OF

THE TCPA, 47 U.S.C. § 227 ET SEQ.

- As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for himself and each member of the Class and Sub-Class \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
 - Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.
 - Any other relief the Court may deem just and proper.

111

TRIAL BY JURY

72. Pursuant to the seventh amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Dated: March 11, 2014

Respectfully submitted,

KAZEROUNI LAW GROUP, APC

By: /s/ Abbas Kazerounian
ABBAS KAZEROUNIAN, ESQ.
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